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JENKINS, WILSON, TAYLOR & HUNT, P. A.
3100 TOWER BLVD., Suite 1200
DURHAM NC 27707

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APR 30 2008

In re Application of:	:	OFFICE OF PETITIONS
Zou et al.	:	
Application No. 10/500587	:	DECISION GRANTING
Filing or 371(c) Date: 10/21/2004	:	PETITION UNDER
Title of Invention:	:	37 CFR § 1.183
PROBE CORRECTION FOR GENE	:	
EXPRESSION LEVEL DETECTION	:	

This Decision is in response to the "Petition for Waiver of Signature of Unavailable Inventors Under 37 C.F.R. § 1.183," filed March 7, 2008.

The petition is **granted**.

The application as-filed identified six inventors as the inventive entity: Guangzhou Zou, Hur-Song Change, Yiping Fan, Fan Long, Xun Wang and Tong Zhu. A nonfinal Office action was mailed on September 7, 2007. In response to the Office action, Applicant filed an Amendment and a Declaration Pursuant to 37 C.F.R. § 1.131, executed by co-inventors Guangzhou Zou, Song Chang and Tong Zhu only. Applicant files the present petition and states that the inventors Yiping Fan, Fan Long, Xun Wang refuse to execute the Declaration. In support of this assertion, applicant provides that the nonsigning inventors were mailed to their last known addresses a copy of the Declaration; a copy of the Office action dated December 7, 2006; a copy of the Office action dated September 7, 2007; a copy of two references, and a listing of the claims .

The MPEP 715.04, Swearing back of Reference, Affidavit or Declarant Under 37 CFR 1.131, provides in relevant part

Where one or more of the named inventors of the subject matter of the rejected claim(s) (who had originally signed the oath or declaration for patent application under 37 CFR 1.63) is now unavailable to sign an affidavit or declaration under 37 CFR 1.131, the affidavit or declaration under 37 CFR 1.131 may be signed by the remaining joint inventors provided a petition under 37 CFR 1.183 requesting waiver of the signature of the unavailable inventor be submitted with the affidavit or declaration under 37 CFR 1.131. Proof that the non-signing inventor is unavailable or cannot be found similar to the

proof required for a petition under 37 CFR 1.47 must be submitted with the petition under 37 CFR 1.183 (see MPEP § 409.03(d)). Petitions under 37 CFR 1.183 are decided by the Office of Petitions (see MPEP § 1002.02(b)).

This section states that a party qualified under 37 CFR 1.42, 1.43 or 1.47 may make the affidavit when it is not possible to produce the affidavit or declaration of the inventor, and that waiver of the signature requirement of the unavailable inventor may be demonstrated by proof similar to that required in a petition under 37 CFR 1.47. In discussing waiver requirements under 37 CFR 1.183, the Office is guided by proof similar to that required when an Applicant is unavailable. In this instance, Applicant asserts that the inventors refuse to join in the Declaration.

Analysis and Conclusion

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a).

Petitioner has shown that the non-signing inventors, Yiping Fan, Fan Long, Xun Wang, refuse to execute the Affidavit.

The petition is granted. The application is being referred to Technology Center Art Unit 1631 for continued examination in due course.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.



Derek L. Woods

Attorney

Office of Petitions